

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3764 OF 1988

Bhogilal Dhanji Shah ...Petitioner
V/s.
Ayodhya Prasad Shivbhajan Mishra & Ors. ...Respondents

Mr.P.N. Karlekar for the Petitioner.
Mr.N.V. Bandiwadekar for the Respondents.

CORAM : V.M. KANADE, J.

DATED : JULY 30, 2007

P.C. :-

. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

2. The petitioners are the original defendants and the respondents are the original plaintiffs. For the sake of convenience, they shall be referred to as defendant and plaintiff. The father of the defendant was the tenant in respect of three galas viz. gala nos.6, 12 and 13 and the monthly rent of each of these galas was Rs.30 per month. The plaintiff filed a suit for eviction of the defendant on four grounds viz. bonafide requirement, subletting of the premises by the defendant in favour of defendant no.2, acquisition of

alternate premises and lastly, non-user. The trial Court decreed the suit on the other three grounds except on the ground of bonafide requirement. The defendant challenged the said judgment and order by filing an appeal. The lower Appellate Court partly allowed the appeal and decreed the suit on the ground of acquisition of alternate accommodation and non-user. However, the decree was set aside in respect of gala no.12.

3. The learned Counsel for the petitioner submitted that on account of several threat given to the petitioner, the petitioner had to shift his residence by acquiring separate premises. He submitted that several chapter cases were pending against the landlord. He submitted that both the courts below had erred in holding that the petitioner had acquired alternate accommodation. He submitted that the evidence of the witness which was on record was in the form of permission which was obtained by the petitioner to construct the premises which permission was renewed subsequently. He submitted that apart from the said evidence, there is no other evidence to show that he had

acquired alternate accommodation.

4. The learned Counsel for the respondent, on the other hand, submitted that the petitioner had admitted at Exhibit 44 that he had acquired alternate accommodation. He submitted that the said alternate accommodation consisted of two rooms, one kitchen, two bedrooms and hall. The submission made by the learned Counsel for the petitioner cannot be accepted in view of his admission at Exhibit 44.

5. The learned Counsel for the petitioner then submitted that the finding recorded by the lower Appellate Court of non-user was not correct. He submitted that in evidence, he had stated that the said gala was occupied by the other members of the family. This submission also cannot be accepted. The lower Appellate Court has rightly taken into consideration the statement of the petitioner wherein he had also stated that the petitioner no.1's four servants and two brothers of the petitioner no.2 were residing in gala no.6. This submission therefore is inconsistent

regarding user of the premises. Both the Courts below have recorded the concurrent finding of facts. No reason to interfere with the said judgment and order passed by the lower Appellate Court.

. Writ Petition, accordingly, is dismissed. Rule is discharged. Under the circumstances, there shall be no order as to costs.

(V.M. KANADE, J.)